

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CLYDE JONES,

No. C 08-2306 JL

Plaintiff,

v.

**REFERRAL FOR REASSIGNMENT  
WITH RECOMMENDATION**

MARY GONZALES et al.,

Defendants.

Plaintiff filed a complaint in this district, and an application to proceed in forma pauperis, pursuant to 28 U.S.C. §1915. Under that section, a litigant may file without paying the filing fee on a showing of indigence and that the complaint is not frivolous. A claim filed in forma pauperis must be dismissed prior to service of process if it is frivolous or malicious, fails to state a claim or seeks monetary damages from defendants who are immune from suit. See 28 U.S.C. 1915(e)(2); see also *Franklin v. Murphy*, 745 F.2d 1221, 1226-27 (9th Cir. 1984). A complaint is factually frivolous if the claims have no arguable legal basis in fact. *Neitzke v. Williams*, 490 U.S. 319, 324-28 (1989) In this case, there are no factual contentions which would support federal jurisdiction.

Plaintiff appears to be indigent, studying for the ministry, but otherwise having no employment, no real property, an old car, and minimal cash on hand. The Court therefore finds that he satisfies the indigence requirement of the statute.

However, the Court should find no basis for federal jurisdiction. Plaintiff alleges that “I am not guilty of harassing Miss Martinez, I talked with her dad and pastor about her helping me naturally and spiritually as my helpmate (Ge[nesis] 2:18), and her dad said, Be sure she finish her education. Mr. Martinez can verify it . . . .”

Plaintiff and Defendant are probably both citizens of California, as this case seems to arise from a California criminal case, and there is no allegation of jurisdiction based on diversity. Plaintiff in the complaint alleges no facts whatever which would support a federal claim. The causes of action, assault, libel, and slander, are all subject to California law. Without any basis of jurisdiction, under either federal law or diversity, this Court would have no jurisdiction.

Accordingly, Plaintiff's claim is legally frivolous, disqualifying him from waiver of the filing fee as provided by 28 U.S.C. §1915.

However, Plaintiff has not consented to the jurisdiction of the magistrate judge, as required by 28 U.S.C. §636(c). A magistrate judge may not deny an in forma pauperis application without consent of the plaintiff. *Tripati v. Rison*, 847 F.2d 548 (9th Cir. 1988) .

This Court hereby refers this case for reassignment to a district court judge, with the recommendation that the in forma pauperis application be denied and the complaint dismissed without prejudice.

IT IS SO ORDERED.

DATED: May 12, 2008

  
JAMES LARSON  
Chief Magistrate Judge

G:\JLALL\CHAMBERS\CASES\CIVIL\08-2306-ref-reassign.wpd